

APPEAL NO. 040307  
FILED MARCH 17, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 15, 2004. The hearing officer determined that the appellant's (claimant) \_\_\_\_\_, compensable injury does not include a right ulnar nerve injury. The claimant appeals this determination and attaches new evidence to his request for review. The respondent (carrier) urges affirmance of the hearing officer's decision and asserts that the new evidence attached to the claimant's appeal should not be considered.

DECISION

Affirmed.

In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record and is raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the claimant's appeal, which were created prior to the hearing date. Consequently, we decline to consider this evidence on appeal.

Extent of injury was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer noted that the evidence was insufficient to establish a causal relationship between the compensable injury and the ulnar nerve injury and found against the claimant. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ASSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251-2237.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge